1950

File No. Prohibition II/50 Pt-III (R)

Legal Department

B. **BRANCH**

K

N/517

Subject:— Rules under the Bombay Prohibition Act, 1949

(For previous pps. pl. see. Pts. I & II)

(For subsequent pps. pl. see pt IV)

File No. Prohibition II/50. (R) Pt III

Bom. 194

264-B

Legal Department.

Revised draft rules settles in consultation with the Office of the Commissioner of Excise are sent herewith.

2. Definitions of the terms 'Club licensee, excise supervision, hotel licensee, foreigner, licensed premises, trade and import licensee and unit' have been inserted for facility of reference.

3. Rule 4 is unnecessary in view of the provisions of section 11 of the Bombay Prohibition Act and would not be a proper rule under section 143(2)(b) of the Act which relates to regulation.

4. These rules provide for regulation of possession, buying, sale, use consumption etc., of foreign liquor by means of granting a licence or permit, as the case may be. In this connection the rules provide for --

(1) payment of fee for the grant of a licence or permit (see rules 6, 70(3) of the R.D. rules);

(2) payment of ~~x~~ fee in addition to licence fee on quantity removed from Custom House etc., or on sales of foreign liquor and payment of interest also in case of failure to pay (see rules 9(2) and 28(b) of R.D. draft);

(3) payment of deposit (see rules 6 and 28 of R.D. draft;

(4) sale of foreign liquor during specified hours and closure of shops (see rules 16 and 17(ii) of R.D. draft);

(5) maintenance of accounts and making of returns (see rule 24(iii) of R.D. draft);

(6) prohibition of the right of transfer to sell etc., granted under a licence (see e.g. rule 24(i) of R.D. draft);

(7) sale of foreign liquor on cash only and for maintenance of cash memos etc. (see e.g. rule 42 of R.D. draft);

(8) regulation of price of foreign liquor. Power to make provision in the aforesaid matters vests in the

Commissioner under section 144 of the Bombay Prohibition Act, 1949. Provisions made in respect of the above matters in the R.D. Rules have therefore been deleted from the revised draft rules. The Commissioner may be requested to make the necessary regulations in that behalf.

5. Rule 8(3) of the R.D. draft provides for compelling a Trade and Import licensee to import and sell foreign liquor to Government of such kind and quantity as may be required by Government. There is no specific provision, similar to section 64 under which a licensee can be required to import and sell to Government foreign liquor as provided in the proposed rule. The said provision therefore is beyond the scope of the Act and has been deleted from the revised draft rule 7.

6. Rule 18 of the R.D. draft provides for payment of cost of the excise staff appointed at a licensed premises of a trade and import licensees. Since there is no specific provision in the Act under which such a provision can be made it has been transposed as a condition of the licence (Form F.L.I.). Similarly, provision for payment of expenses for excise ~~x~~ escort by the licensee contained in rule 21 of the R.D. draft has been transposed as a condition of the licence.

7. Rule 67 of the R.D. draft provides that if the licence is suspended or cancelled or is not renewed on its expiry, the licensee shall surrender the unsold stock of foreign liquor to the Collector without claiming any compensation. Section 55 bars payment of compensation for the cancellation or suspension of the licence etc., under section 54. But there is no provision in the Act debarring payment of compensation on the surrender of unsued stocks. The provision in the said rule disentitling a licensee to claim any compensation under the circumstances mentioned in the R.D. rule has therefore been deleted from the said rule 64 as well as from other similar rules and the licence forms.

8. R.D. draft rule 74 (revised rule 68).- It will be for the Prohibition Department to decide whether the provisions of this rule should be restricted to a person who has a family and who is its head. If a person has no family and is living alone, is he disentitled to get an emergency permit? Moreover the word family is an ambiguous expression. Liberally it means all persons descended from a common ancestor. It will be desirable to use the word "household" and define it as a group of persons residing and messing jointly as the members of one domestic unit. It will be for the Prohibition Department also to decide whether the maximum of two drams stated in the rule should be irrespective of the number of the members of the household. In other words whether in allotting the quantity regard should not be paid to the number of the members of the household.

9. R.D. draft rule 50 (revised rule 48).-- In addition to the Secretary, reference has been made to any person authorised by the Club. Every Club will not necessarily have a Secretary.

10. R.D. draft rule 71 provides for an application by a foreigner for a foreigner's permit. There is no provision in the rules, however, which defines the expression 'foreigner'. Sub-rule (2) of that rule, however refers to a person falling under clause (c) of sub-section (1) of section 40. Clause (c)(i) however refers to a person who was either born and brought up in any country outside India but such a person can be a citizen of India under Article 5 of the Constitution of India. The proposed rule 71 of the R.D. draft would therefore result in discriminating between a citizen and citizen of India and would offend against article 15 of the Constitution. The expression "foreigner" has, therefore, beel defined to mean a person falling under clause (c) of section 40(1) who is not a citizen of India.

Id/-J.R.D. 28/3
Additional Secretary to Government.

U.R. to R.D. No. 4252 ,dated the 28th March 1950.

BKS. 28/6/ 4c.

Legal Department.

Revised draft regulations are sent herewith subject to the following observations:-

The expressions "ordinary denatured spirit", "methylated or special industrial denatured spirit" and "Chemical Analyser" have been defined for facility of reference.

Section 144 (1) (g) empowers the Director to make regulations for declaring the processes by which spirits shall be denatured for particular purposes. Under the proposed Bombay Denatured Spirit Regulations, permits will be given for the possession and use of denatured spirit of all the three kinds for (1) domestic purposes, (2) medical, scientific and educational purposes, ~~(2)~~ and (3) purposes of art, industry or profession. Regulation 3 of the revised draft therefore provides for denaturing spirit for any of the aforesaid purposes in accordance with the processes laid down in regulations 5,6 and 7 (which lay down the processes for denaturing spirit).

The other provisions of the R.D. draft have been recast and arranged in a logical order.

Regulation 4 (2) (ii) and 4 (3) and regulations 5 and 6 of the R.D. draft - In the preparation of methylated industrial denatured spirit, or the special industrial denatured spirit, the power is reserved to the Director requiring a manufacturer to add, in addition to ~~xxxxxxx~~ woodnaphtha, such proportion of other substances, if any, as may be ordered by him. If the Director thinks that it is necessary to addother substances he had got power to amend regulations from time to time. That will achieve the object in view. It is not necessary to retain the aforesaid two provisions. The process intented

in regulation 7 should be specified in that regulation only know.

Regulation 12 of the R.D. draft - Regulation 10 of the R.D. draft provides for payment of cost of supervising. The provision is not legally feasible and has been omitted from the revised draft.

R.D. is requested to verify if the revised draft regulations are suitable and carry out their intentions.

Id/-J.R.D. 18/10
Additional Secretary to Government.

U.R. to R.D.No. 14645 dated the 19th October 1950.

BKS. 29/6/ 4c.

in regulation 7 should be specified in that regulation only now.

Regulation 8 of the R.D.draft - The necessary provision being made in the proviso to each of the regulations 5, 6 and 7 it is not necessary now to retain regulation 8.

Regulation 10 of the R.D. draft - Regulation 10 of the R.D. draft provides for payment of cost of supervising. The provision is not legally feasible and has been omitted from the revised draft.

R.D. is requested to verify if the revised draft regulations are suitable and carry out their intentions.

Id/-J.R.D. 18/10
Additional Secretary to Government.

U.R. to R.D.No. 14645 dated the 19th October 1950.

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Legal Department.

Methyl alcohol is a non-beverage. The observations made in respect of denatured spirit (vide paras 1 to 4 of the linked file) would therefore apply also to the provisions contained in the draft of the Bombay Methyl Alchhol Rules.

2. Rules 3 and 4 on page 5 of the Revenue Department draft are not necessary and may be deleted.

3(a) Rule 6(2) of the Revenue Department draft which provides for the grant of permit in form M.A. I on payment of a fee of Rs. 2/- in advance may be deleted from the draft as the power to prescribe fees vests in the Director under section 144. Other rules may be similarly amended.

(b) Rule 6(5)(ix) of the Revenue Department draft provides for preserving the accounts, requisitions etc. for a period of one year after the expiry of the permit. This provision may be omitted from the draft i as it would not be legally feasible to enforce the provision after the expiry of the period of the licence.

4. Rule 21 of the Revenue Department draft requires the Collector or the Chief Excise Authority of the place of export to issue orders for the supply of methyl alcohol to the importer. It also required the said Officers to return Part II of the import pass to the importer.

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It is not appropriate to cast any obligation on the officers of other states over whom it would not be feasible to exercise any control. The rule should be recast so as to throw the onus on the licensee to obtain Part II from the Collector or the Chief Excise Authority of the place of export and to obtain the orders of the said authority for the supply of methyl alcohol to him.

5. Rule 23 of the Revenue Department draft prohibits the transport of methyl alcohol except under an import or transport pass. Rule 24 prohibits the grant of an import or transport pass except on payment of pass (vend) fee provided in the rule. Rules 17 and 19 of the Revenue Department draft already provide for regulating transport and import of methyl alcohol. These rules however do not make any provision for fixing of fee. The main intention behind rules 23 and 24 appears to be to provide for payment of pass (vend) fee whenever any methyl alcohol is transported or imported into the State of Bombay. The necessary provision for payment of fee may be made in rules 18 and 20.

6. As observed in the other case, the Revenue Department should examine the rules in the light of the observations made above.

Id/-J.R.D.
22/11
Additional Secretary to Government.

U R. to R.D.,No. 16480 ,dated the 23rd November 1950.

BKS. 29/6/ 4c.